

EXHIBIT A

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PROCEEDINGS

February 19, 2008

THE COURT: Be seated, please.

THE CLERK: We're here in the matter of the Attorney General of the State of Oklahoma, et al, vs. Tyson Foods, Inc., et al, Case Number 05-CV-329-GKF. Would the parties please enter their appearance.

MR. BULLOCK: Louis Bullock for the State of Oklahoma.

MS. BURCH: Kelly Burch, State of Oklahoma.

MR. NANCE: Bob Nance for the State of Oklahoma.

MR. BAKER: Fred Baker for the State of Oklahoma.

MR. GARREN: Richard Garren, State of Oklahoma.

MR. PAGE: David Page, State of Oklahoma.

MR. EDMONDSON: Drew Edmondson, State of Oklahoma.

1 presenting information about their farms. And then there's --

2 THE COURT: I'm curious. Does that also apply to the
3 rates of application on a producer's own field?

4 MR. RYAN: It's my understanding it does, Your Honor.

5 THE COURT: You'd concede that the intensity, although
6 the practice has been going on for 50 years, the intensity has
7 increased over time; correct?

8 MR. RYAN: Are you talking about the amount of the
9 poultry waste that is being applied to the fields?

10 THE COURT: The number of chickens --

11 MR. RYAN: Sure.

12 THE COURT: -- the number of houses, the amount of
13 waste produced, et cetera?

14 MR. RYAN: Absolutely, Your Honor. Everything -- this
15 is the sixth fastest growing area of the nation. Everything in
16 this watershed area is growing. Humans -- the number of humans
17 have exploded, the number of cattle have increased, everything
18 has increased.

19 THE COURT: You understand, Mr. Ryan, of course, that
20 the State is asking for a complete injunction on application.

21 MR. RYAN: Yes.

22 THE COURT: But one of their arguments is that it may
23 not be waste to the extent that the fertilizer can be taken up
24 by the ground and the plants to which it's applied, and that it
25 may under the law be waste to the extent it's overapplied.

1 MR. RYAN: I understand that argument, yes.

2 THE COURT: Right. Of course, that presents serious
3 enforcement questions. How would -- if a court were to buy
4 into that argument that it is waste to the extent that it is no
5 longer fertilizer, that it is being disposed of at amounts
6 greater than agronomic need, would you not concede that it may
7 well be, under the law, waste?

8 MR. RYAN: No, Your Honor, for this reason, I mean,
9 there are --

10 THE COURT: Because, I mean, in a system where the
11 integrators own the chickens but the producers own their
12 excrement and it is of real economic necessity to get rid of
13 that excrement, it is necessarily economically advantageous to
14 apply, perhaps, in amounts greater than agronomic need;
15 correct?

16 MR. RYAN: Well, if I could speak for a moment, Your
17 Honor.

18 THE COURT: Sure.

19 MR. RYAN: I would say to you that poultry litter
20 has -- as indicated by the affidavit of Dr. Coale, an
21 agronomist from Maryland, it's in the mountain of material you
22 have. He tells you that there are 13 elements in poultry
23 litter all of which are essential for plant growth, for healthy
24 plant growth. One -- the state is focusing on but one of those
25 elements, phosphorus. The other 12 are, to my knowledge, not

1 being overapplied and are needed for plant growth.

2 THE COURT: Well, but here they're focusing on E. coli
3 and bacteria, not on phosphorus; correct?

4 MR. RYAN: I'm sorry, Your Honor?

5 THE COURT: In this proceeding are they not focusing
6 on bacteria as opposed to phosphorus?

7 MR. RYAN: Yes, Your Honor. No, that's absolutely
8 right, but we're talking about what the land needs and what's
9 being overapplied.

10 THE COURT: Right, right.

11 MR. RYAN: I think their argument only goes to the
12 phosphorus, to the one element of phosphorus. It does not
13 address the other twelve elements which I say are needed for
14 plant growth and are beneficial to the crops and plants and
15 pastures and forage. And I don't think there's any question
16 but that there has been an overapplication of litter on some or
17 many farms. That's not an issue in our book. I'm certainly
18 not arguing that in terms of phosphorus.

19 Your Honor, these are the defendants, there's 13 of
20 them. They're in seven, if you will, if you disregard
21 affiliated companies, there's seven companies. The plaintiffs
22 want to treat us as if we were one homogenous group. And if
23 they can show that the defendants, plural, apply bacteria
24 somehow to the waterways and that makes all the defendants
25 liable. These defendants are competitors of one another, Your

1 Honor. Some are small family-owned companies, some are not,
2 but we're not a homogeneous one entity that you can just simply
3 say well, if we can prove that they did something, then we're
4 going to get this injunction. That's simply not the law, Your
5 Honor.

6 Your Honor, they have brought, as you know -- and you,
7 of course, already touched upon this -- they've brought this
8 case under RCRA. So there's certain things they've got to
9 prove. And the first one, and Mr. Edmondson talked about it,
10 the first one is they've got to prove that poultry litter is a
11 solid waste. And I would submit to Your Honor this is the
12 first venue in our nation's history in the 30 some years of
13 RCRA legislation that anyone has taken that position. There is
14 no precedent for it. Whether you look at court precedent,
15 legislative history precedent or you listen to the people that
16 manage the RCRA program, no one has taken that position. It's
17 simply without foundation because of two reasons. Number one,
18 there is an exemption under RCRA for agricultural wastes which
19 are returned to the soil as fertilizer and soil conditioner.

20 THE COURT: Once again, getting to the issue though, a
21 possible distinction between that which can be used and taken
22 up as fertilizer and that which is overapplied; correct?

23 MR. RYAN: I understand the point, Your Honor, but I
24 don't know of any authority that says well, if we can find that
25 one element of a product that has 13 elements, if we can find

1 that one of those elements may be overapplied, then we get to
2 treat this whole thing as not being fertilizer, returned to the
3 soil as a conditioner or fertilizer. I just don't know of any
4 law that supports that position. I don't think that is the
5 law. I know it's not the law.

6 Secondly, Your Honor, there is a -- even if there was
7 an exemption which, of course, there is, they have to
8 establish -- I don't know if we have -- do you have a screen,
9 Your Honor, that you are looking at when exhibits come up?

10 THE COURT: Yes, I do right here.

11 MR. RYAN: If we could bring up the RCRA screen,
12 Exhibit 465. The term solid waste means, and it goes on, it
13 has to be discarded material. And I know, again, I understand
14 Your Honor's point but again I would point out, Your Honor,
15 that it is not discarded. We wouldn't be here if it was
16 discarded. These farmers and ranchers are applying it to their
17 properties and their grounds and their crops because it is good
18 for the soil. It's not discarded materials. It's not an old
19 battery that's thrown away as some of the case law has
20 suggested. We cited the appropriate law in our papers, Your
21 Honor, and as you suggested, I'm not going to go over it again.

22 Your Honor -- if we could have Exhibit 153. Your
23 Honor, in this case the plaintiffs have argued that they have a
24 minimal burden under RCRA. I don't know where that burden is.
25 I'm familiar with the case that they cited, the Burlington